

# FISCAL NOTE

**Bill #:** SB510

**Title:** Allow county property tax relief through local option realty transfer tax

**Primary Sponsor:** John Esp

**Status:** As Amended in Senate Committee

Sponsor signature

Date

David Ewer, Budget Director

Date

## Fiscal Summary

	<b><u>FY 2006 Difference</u></b>	<b><u>FY 2007 Difference</u></b>
<b>Expenditures:</b>		
General Fund	\$0	\$0
State Special Revenue	\$0	\$0
<b>Revenue:</b>		
General Fund	\$0	\$0
State Special Revenue	\$0	\$0
<b>Net Impact on General Fund Balance:</b>	\$0	\$0

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Significant Local Gov. Impact | <input checked="" type="checkbox"/> Technical Concerns |
| <input type="checkbox"/> Included in the Executive Budget         | <input type="checkbox"/> Significant Long-Term Impacts |
| <input type="checkbox"/> Dedicated Revenue Form Attached          | <input type="checkbox"/> Needs to be included in HB 2  |

## Fiscal Analysis

### ASSUMPTIONS:

#### **Department of Revenue (DOR)**

1. This bill, which is effective on passage and approval, would allow a county government to impose a realty transfer tax on transfers of class 4 residential and commercial real property, and class 3 agricultural real property within the county.
2. Under the proposal, a realty transfer tax may be imposed or repealed within a county:
  - (a) by the people of the county by initiative; or
  - (b) by the board of county commissioners by adoption of a resolution and referral to the people.
3. Under Section 4 of the bill, the following transactions would be exempt from the realty transfer tax:
  - (a) an instrument recorded prior to [the effective date of this act];
  - (b) a transfer solely to provide or release security for a debt or obligation;
  - (c) a transfer by the United States, this state, or any instrumentality, agency, or subdivision of the United States or this state;
  - (d) an instrument that, without added consideration, confirms, corrects, modifies, or supplements a previously recorded instrument;

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- (e) a transfer pursuant to a court decree of partition;
  - (f) a transfer pursuant to mergers, consolidations, or reorganizations of corporations, partnerships, or other business entities and includes a transfer by co-owners to a business entity solely owned by them;
  - (g) a transfer by a subsidiary corporation to its parent corporation without actual consideration or in sole consideration of the cancellation or surrender of subsidiary stock;
  - (h) a transfer of decedents' estates;
  - (i) a transfer of a gift;
  - (j) a transfer between husband and wife;
  - (k) a transfer between parent and child;
  - (l) an instrument the effect of which is to transfer the real property to the same party or parties;
  - (m) a sale for delinquent taxes or assessments, a sheriff's sale, a bankruptcy action, or a mortgage foreclosure; or
  - (n) a transfer made in contemplation of death.
4. The transfers under 4(f) between co-owners, 4(j) between husband and wife, and 4(k) between parent and child would not be exempt if the property is subsequently transferred within three years to another person or entity. The tax, plus interest from the time of the exempt transaction would be payable by the transferor at the time of the second transfer.
  5. If the person seeking to record the transfer claims an exemption, the treasurer is to presume the claim is valid. If the treasurer determines within 30 days that the transaction is not exempt, the treasurer is to notify the taxpayer of this and direct the taxpayer to pay the tax.
  6. The tax is applied to the "market value" of the property transferred. Market value in an arm's-length transaction is the full consideration paid. In the case of a non arm's-length transaction, or transfers where either the transferee or the county treasurer feels that the value on the realty transfer certificate is not market value, an appraisal conducted for purpose of the sale may be used. If an appraisal from the sale is not available, the county selects a certified or licensed real estate appraiser to determine market value. If the county must select the real estate appraiser to determine the market value, the appraiser's fee is paid from the realty transfer tax. If the transferee is dissatisfied with the appraiser's valuation, the transferee may hire another certified or licensed real estate appraiser to determine market value. If the treasurer and the transferee are unsatisfied with the second valuation, the two real estate appraisers select a third certified or licensed real estate appraiser to review the two appraisals (see technical note #2).
  7. The tax would be paid by the transferee (the purchaser), or by the person seeking to record the transaction.
  8. The tax would be administered by the county treasurer and the county clerk and recorder.
  9. Taxes collected under the realty transfer tax must be deposited in the county's realty transfer tax holding account. All interest and income earnings of the account must also be deposited in the account.

### Revenue

10. Revenue from the realty transfer tax *must* be used to offset property tax revenues for county purposes, but not taxes for school or education purposes, that are funded by countywide property tax levies.
11. Among other things, the total amount of revenue generated under this proposal will depend on which county governments opt to adopt the transfer tax, when the tax is adopted, and the market value of sales subject to the tax. Because of the number of counties that would opt, or when they would opt is unknown, the amount of this tax cannot be accurately predicted. For purposes of this fiscal note, an estimate of the revenue potential under the assumption that all county governments would adopt the tax is as follows. However, it is unlikely that all counties would opt for a realty transfer tax.
12. The tax is equal to 1% of the market value in excess of \$300,000 of transferred properties. The tax is imposed at the time of sale, and must be paid at the time the sale is recorded. To provide an estimate of the potential revenue impact of this proposal, DOR examined all relevant sales reported on realty transfer

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certificates in the sales transaction files for the past few years. Under current statutes, agricultural properties are exempt from the reporting requirements that apply to realty transfer certificates; consequently, it was not possible to obtain a reliable estimate of the impact of this proposal on sales of agricultural land under this approach.

13. The following table provides information from DOR's sales history files for each of the past three years. These figures show the total market value of residential and commercial property sales; the amount of value in excess of \$300,000; and the estimated amount of revenue that would be generated under this bill if all counties enacted the realty transfer tax. As the table shows, in the most recent two years, the realty transfer tax would have generated approximately \$3.8 million in each year if all counties had adopted the tax. Please note that the estimate and table below does not include agricultural property. In addition, some of the properties listed from prior years also could be exempt under the proposal (refer to assumption #3).

<b>Estimated Impacts of SB510 1% Local Option Realty Transfer Tax</b>				
<u>Calendar Year</u>	<u>Number of Sales</u>	<u>Market Value of Sales</u>	<u>Market Value After \$300,000 Exemption</u>	<u>Local Option Realty Transfer Tax</u>
2002	888	\$500,751,245	\$234,351,245	\$2,343,512
2003	1,357	\$785,690,835	\$378,590,835	\$3,785,908
2004	1,275	\$770,748,162	\$388,248,162	\$3,882,482

14. The bill strikes language pertaining to the realty transfer act in 15-7-307, MCA. The stricken language currently provides an exemption to the reporting requirements for agricultural land sales; thus, striking this language will make these properties subject to the realty transfer act under the proposal.
15. The proposal will not materially impact administrative expenses of the Department of Revenue. There is no impact to state revenues, as the tax is a local option tax that accrues only to county governments.

### EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

All of the revenues generated by the local option realty transfer tax will be used to reduce local property taxes assessed for county government purposes; mills levied for countywide school purposes and local school districts will not be eligible for a property tax reduction under the proposal. Hence, to the extent that the amount of realty transfer tax generated does not exceed the amount of property taxes levied by countywide county government mills, there is no net increase or decrease in revenue for county governments.

The tax would be administered by the county treasurer and the county clerk and recorder. The bill does not specify any revenue to be held for administrative costs to the county. (See technical note #3)

### TECHNICAL NOTES:

1. The proposal requires that the realty transfer tax be imposed on the transfer of real property and that the value declared on the realty transfer certificate be used as a basis to calculate the tax. The value listed on the certificate could include consideration for the transfer of property not subject to the tax (business equipment, liquor licenses and other intangible property, etc.). The proposal does not provide a

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mechanism for allocating the sales price listed on the realty transfer certificate to the exempt and non-exempt property being transferred.

2. New section 1, sub (2)(ii) and new section 3, sub (4) specify that non-arms length transactions and those transactions where the value declared in the realty transfer certificate is in question that the market value must be set by a certified or licensed real estate appraiser. If an appraisal from the sale is not available, a certified or licensed real estate appraiser is chosen by the county, and must be paid from the proceeds of the tax. An appraisal from a licensed appraiser could cost anywhere from a \$450 and up. At a cost of \$450, the amount of the property transferred would need to be \$345,000 just to cover the cost ( $\$45,000 \times 1\% = \$450$ ) of the appraisal. If the property value were less than that, there would not be enough tax to cover this cost. The proposal does not specify how the fee would be paid if the tax was not enough to pay for the appraisal.
3. New section 4, sub (2) allows for a one-time exemption for transfers from co-owners to a business entity, husband to wife, or parent to child, but the property cannot be transferred again for 3 years after the initial transfer. Tracking such transfers and keeping a log would create additional work for the county treasurer's office or clerk and recorder's office.
4. New section 5, sub (2) allows a taxpayer to contests the tax assessment or the denial of an exemption from the tax, the taxpayer may, before payment of any tax, appeal to district court the tax assessment or the denial of the exemption. Section 5 (1) and section 3 specifies that the tax is due before the transfer of the deed or title. It appears that the deed or title would not be filed under these scenarios.